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Attorneys for Plaintiff Nikola Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Nikola Corporation, a Delaware
corporation,

Plaintiff,

vs.

Tesla, Inc., a Delaware corporation,

Defendant.

Case No.: 3:18-CV-07460-JD

The Hon. James Donato

**DECLARATION OF L. RICHARD
WILLIAMS IN SUPPORT OF
PLAINTIFF'S RESPONSE TO ORDER
TO SHOW CAUSE**

DECLARATION OF L. RICHARD WILLIAMS

I, L. Richard Williams, declare as follows:

1. I am a member of the Bar of the State of Arizona and a Member of Beus Gilbert McGroder, PLLC, attorneys for Nikola Corporation. I make this declaration of personal, firsthand knowledge, and, if called and sworn as a witness, I could and would testify competently thereto.

1. Attached as **Exhibit A** hereto is a copy of the 14 July 2021 email notifying Reed Willis that Tesla attorney Dustin Knight had reached out telephonically to discuss the scheduling order.

2. Attached as **Exhibit B** hereto is a copy of the 14 September 2021 emails between Reed Willis and Tesla attorney Dustin Knight scheduling a time to discuss the scheduling order.

3. Attached as **Exhibit C** hereto is a copy of the 3 September 2021 email from Reed Willis to Tesla attorney Dustin Knight notifying Mr. Knight that he left Beus Gilbert McGroder, PLLC.

4. Attached as **Exhibit D** hereto is a copy of the 24 September 2021 email from Leo Beus to Trevor Milton regarding contacting Mr. Milton's attorneys to determine his availability for deposition.

5. Attached as **Exhibit E** hereto is a copy of the 27 September 2021 email from Dustin Knight to Richard Williams, David Neal, Lam Nguyen and Adam Pivovar regarding follow up from a phone call between the parties on 24 September 2021.

6. Attached as **Exhibit F** hereto is a copy of the 28 September 2021 email from Leo Beus to Trevor Milton regarding which attorney to contact in Mr. Milton's criminal case.

7. Attached as **Exhibit G** hereto is a copy of the 28 September 2021 email from Dustin Knight to Richard Williams, David Neal, Lam Nguyen and Adam Pivovar providing a draft Joint Statement for submission to the court.

8. Attached as **Exhibit H** hereto is a copy of the draft Joint Statement for Submission to the Court that was attached to Exhibit E.

9. Attached as **Exhibit I** hereto is a copy of the 29 September 2021 email from Richard Williams to David Neal regarding edits to the draft Joint Statement on Proposed Case Schedule.

1 10. Attached as **Exhibit J** hereto is a copy of the 29 September 2021 email from Leo Beus
2 to Brad Bondi and Richard Williams regarding Trevor Milton's availability for deposition.

3 11. Attached as **Exhibit K** hereto is a copy of the 5 October 2021 email from David Neal
4 to Dustin Knight, Adam Pivovar, and Richard Williams regarding a proposed case schedule for
5 discussion.

6 12. I declare under penalty of perjury under the laws of the United States that the foregoing
7 is true and correct.

8
9
10 Executed on 6th day of October 2021 at Phoenix, Arizona.

11 By /s/ L. Richard Williams
12 L. Richard Williams
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EXHIBIT A

From: [Lisa Hoogervorst](#)
To: [Reed Willis](#)
Subject: Phone call
Date: Wednesday, July 14, 2021 1:48:55 PM

Reed, you got a call from Dustin Knight at Cooley who wants to discuss the Tesla file proposed schedule.

Please call Dustin at 571 643 5164.

Thank you,

Lisa Hoogervorst

Legal Secretary

BEUS GILBERT McGRODER PLLC

701 North 44th Street | Phoenix, AZ 85008

Direct: 480.429.3108 | Main: 480.429.3000 | Fax: 480.429.3111

Email: lhooervorst@beusgilbert.com

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EXHIBIT B

From: [Knight, Dustin M](#)
To: [Reed Willis](#)
Subject: RE: Nikola-Tesla
Date: Wednesday, July 14, 2021 2:00:43 PM

Sounds good – my Friday is wide open; feel free to give me a call whenever works best for you. 571-643-5164.

Dustin Knight

Office: +1 703 456 8024 • Fax: +1 703 456 8100 • Cell: +1 571 643 5164
Email: dknight@cooley.com • www.cooley.com

From: Reed Willis <rwillis@beusgilbert.com>
Sent: Wednesday, July 14, 2021 4:59 PM
To: Knight, Dustin M <dknight@cooley.com>
Subject: Re: Nikola-Tesla

[External]

Thanks, Dustin. I agree we will need to adjust the rest of the schedule. Let's plan on discussing on Friday if you're available.

Best,
Reed

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From: Knight, Dustin M <dknight@cooley.com>
Sent: Wednesday, July 14, 2021 4:53:24 PM
To: Reed Willis <rwillis@beusgilbert.com>
Subject: RE: Nikola-Tesla

Hi Reed,

Related to that, yes. The proposed November / December hearing date impacts the rest of the case schedule, which I wanted to discuss with you. Given that we have time to figure this out, we can wait until you're back in the office for us to discuss.

Best,
Dustin

Dustin Knight

Office: +1 703 456 8024 • Fax: +1 703 456 8100 • Cell: +1 571 643 5164
Email: dknight@cooley.com • www.cooley.com

From: Reed Willis <rwillis@beusgilbert.com>
Sent: Wednesday, July 14, 2021 4:51 PM
To: Knight, Dustin M <dknight@cooley.com>
Subject: Nikola-Tesla

[External]

Dustin,

I'm out of office in another matter. I'm assuming you want to discuss claim construction hearing dates. What dates work for you? We are generally available in November and December.

Thanks,
Reed

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EXHIBIT C

Nancy Leahy

From: Reed Willis <rwillis@beusgilbert.com>
Sent: Friday, September 3, 2021 3:47 PM
To: Knight, Dustin M
Cc: David Neal
Subject: Nikola-Tesla

Dustin,

I'm sorry that we never finalized a scheduling order for the Nikola-Tesla case. I'm leaving Beus Gilbert for an in-house position. In the future, please contact David Neal about the Nikola-Tesla matter. He will help prepare a schedule for the rest of the matter. He will be making an appearance in the case soon.

Best,
Reed

K. Reed Willis

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701 North 44th Street | Phoenix, AZ 85008

Direct: 480.429.3012 | Main: 480.429.3000 | Fax: 480.429.3100

Email: rwillis@beusgilbert.com

Assistant: Lisa Hoogervorst | 480.429.3108 | lhoogervorst@beusgilbert.com

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EXHIBIT D

From: [Leo Beus](#)
To: [Trevor Milton](#)
Cc: [NikolaTeam](#)
Subject: Nikola
Date: Friday, September 24, 2021 12:20:36 PM

Hello Trevor:

As you know, Nikola is in litigation with Tesla regarding the design of Teslas' truck. You would be an important witness in that case. We assume that your lawyers would oppose any attempt to take your deposition until your criminal issues are resolved, but need to confirm that with them so that we can ask the judge to put the litigation on hold until then. Would you please alert your lawyers to this issue and let them know we will be contacting them to confirm that this is their position? Also, would you please let me know which lawyer I should contact?

Thank you,

Leo

Leo R. Beus

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701 North 44th Street | Phoenix, AZ 85008

Direct: 480.429.3001 | Main: 480.429.3000 | Fax: 480.429.3111

Email: lbeus@beusgilbert.com

Secretary: Pat Gaghagen | 480.429.3101 | pgaghagen@beusgilbert.com

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EXHIBIT E

From: [Knight, Dustin M](#)
To: [Richard Williams](#); [David Neal](#)
Cc: [Nguyen, Lam](#); [Pivovar, Adam](#)
Subject: Nikola v. Tesla: Update on Mr. Milton's availability
Date: Monday, September 27, 2021 7:23:05 AM

Counsel,

Thank you for the call last Friday. On the call, you agreed to contact Mr. Milton's criminal defense counsel to determine Mr. Milton's availability for deposition in this case and provide us with an update later in the day. Please provide us today with the status on your outreach to Mr. Milton's counsel and whether he will be made available for a deposition in this case. As noted on our call, the parties should provide the Court with an update on scheduling and how the issue of Mr. Milton's criminal indictment is likely to affect the schedule of the case moving forward.

Regards,
Dustin

Dustin Knight

Cooley LLP
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA 20190-5640
+1 703 456 8024 office
+1 703 456 8100 fax
+1 571 643 5164 mobile
dknight@cooley.com
Pronouns: he, him, his

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EXHIBIT F

From: [Leo Beus](#)
To: [Trevor Milton](#)
Subject: RE: Traveling tonight
Date: Tuesday, September 28, 2021 11:03:11 AM

Thank you Trevor. Following up on another point, would you please let us know which of your criminal lawyers we should contact to verify that they will not make you available for depositions until your criminal case is concluded? This inquiry is specifically for the Nikola v Tesla case. We need to let the judge know so we can ask to put that case on hold.

Great to hear you are making progress.

Leo

Leo R. Beus

BEUS GILBERT McGRODER PLLC

701 North 44th Street | Phoenix, AZ 85008
Direct: 480.429.3001 | Main: 480.429.3000 | Fax: 480.429.3111

Email: lbeus@beusgilbert.com

Secretary: Pat Gaghagen | 480.429.3101 | pgaghagen@beusgilbert.com

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From: Trevor Milton <tspent@gmail.com>
Sent: Tuesday, September 28, 2021 9:05 AM
To: Leo Beus <lbeus@beusgilbert.com>
Subject: Traveling tonight

Leo, I got your email. I'm flying back and forth from Arizona today and have a call with Troy, my attorney to get this signed and over to you. Hope to have it to you by weeks end. Or sooner.

Thanks for the follow up and yes, we are doing pretty well actually. Good things going on our end.

Trevor

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EXHIBIT G

From: [Knight, Dustin M](#)
To: [Richard Williams](#); [David Neal](#)
Cc: [Nguyen, Lam](#); [Pivovar, Adam](#)
Subject: RE: Nikola v. Tesla: Update on Mr. Milton's availability
Date: Tuesday, September 28, 2021 1:04:47 PM
Attachments: [Nikola v. Tesla -- Joint Statement on Proposed Case Schedule.docx](#)

Counsel,

As a follow-up to our e-mail yesterday, we have drafted a joint statement apprising Judge Donato of the parties' scheduling discussions and how Mr. Milton's criminal indictment may affect the schedule of the case moving forward. Please let us know if Nikola agrees to submitting the attached status update to the Court.

Best,
Dustin

Dustin Knight

Office: +1 703 456 8024 • Fax: +1 703 456 8100 • Cell: +1 571 643 5164

Email: dknight@cooley.com • www.cooley.com

From: Knight, Dustin M
Sent: Monday, September 27, 2021 10:23 AM
To: Richard Williams <rwilliams@beusgilbert.com>; 'David Neal' <dneal@beusgilbert.com>
Cc: Nguyen, Lam <lnguyen@cooley.com>; Pivovar, Adam <apivovar@cooley.com>
Subject: Nikola v. Tesla: Update on Mr. Milton's availability

Counsel,

Thank you for the call last Friday. On the call, you agreed to contact Mr. Milton's criminal defense counsel to determine Mr. Milton's availability for deposition in this case and provide us with an update later in the day. Please provide us today with the status on your outreach to Mr. Milton's counsel and whether he will be made available for a deposition in this case. As noted on our call, the parties should provide the Court with an update on scheduling and how the issue of Mr. Milton's criminal indictment is likely to affect the schedule of the case moving forward.

Regards,
Dustin

Dustin Knight

Cooley LLP
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Reston Town Center
11951 Freedom Drive
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EXHIBIT H

N Leo R. Beus (*pro hac vice*)
lbeus@beusgilbert.com
L. Richard Williams (*pro hac vice*)
rwilliams@beusgilbert.com
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** additional attorneys listed in signature block*

Attorneys for Plaintiff and Counterdefendant
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Heidi L. Keefe (SBN 178960)
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lnguyen@cooley.com
COOLEY LLP
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Palo Alto, CA 94304-1130
Telephone: (650) 843-5000
Facsimile: (650) 849-7400

** additional attorneys listed in signature block*

Attorneys for Defendant and Counterclaimant
TESLA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NIKOLA CORPORATION,

Plaintiff and
Counterdefendant,

v.

TESLA, INC.,

Defendant and
Counterclaimant.

CASE NO. 3:18-cv-07460-JD

**JOINT STATEMENT ON PROPOSED
CASE SCHEDULE**

1 In view of the Court's July 7, 2021 Order requesting the parties propose new dates for the
 2 tutorial and claim construction hearings in November or December 2021 (Dkt. No. 153) and its
 3 September 2, 2021 Order vacating the existing dates (Dkt. No. 155), Nikola Corporation ("Nikola")
 4 and Tesla, Inc. ("Tesla") provide the following update on their efforts to address the Court's request.

5 In early July 2021, the parties conferred on how moving the dates for the tutorial and claim
 6 construction hearings to November or December 2021 would necessitate an extension of fact and
 7 expert discovery deadlines to allow adequate time for the parties and their experts to consider the
 8 Court's claim construction rulings for U.S. Patent No. 10,077,084. The parties have since discussed
 9 an appropriate timeframe for these discovery periods, accounting for concerns regarding the
 10 availability of Mr. Trevor R. Milton, Nikola's former founder, CEO, and a critical witness in this case.

11 Mr. Milton, identified in both parties' Rule 26 initial disclosures, is the first named inventor
 12 on each of the Patents-in-Suit and served as Nikola Corporation's CEO from October 2014 through
 13 September 2020, during the development of the Nikola One at issue in this case. Accordingly, Mr.
 14 Milton is in possession of knowledge and/or information that is material to the parties' claims and
 15 defenses, including Tesla's inequitable conduct counterclaims, and cannot be reasonably obtained by
 16 other means. (*See* Tesla's Counterclaims, ¶¶14-30, 65-68, Dkt. No. 128.)

17 At this time, Mr. Milton is the subject of fraud charges in a criminal proceeding, *USA v. Trevor*
 18 *Milton*, Case No. 1:21-cr-00478-ER (S.D.N.Y.) (*see* Ex. A), and an SEC enforcement action, *United*
 19 *States Securities and Exchange Commission v. Trevor Milton*, Case No. Case No. 1:21-cv-06445
 20 (S.D.N.Y.) (*see* Ex. B), related to alleged misrepresentations Mr. Milton made during his tenure as
 21 Nikola's CEO, including statements made with respect to certain Nikola semi-truck vehicles that are
 22 material to this case. Counsel for Nikola has reached out to Mr. Milton's criminal defense counsel to
 23 determine if Mr. Milton is available for deposition in light of these charges and how the present case
 24 should proceed in view of the criminal charges against Mr. Milton.

25 The parties will continue working together to determine the most effective manner of
 26 conducting discovery on Mr. Milton and the most effective schedule for the present case to proceed,
 27 and provide the Court with a proposed schedule as soon as reasonably practicable once Mr. Milton's
 28 status as an available witness is determined.

1 Dated: October 1, 2021

Respectfully submitted,

2 By: /s/
3 L. Richard Williams

4 **BEUS GILBERT PLLC**

Leo R. Beus (Admitted *Pro Hac Vice*)

lbeus@beusgilbert.com

5 L. Richard Williams (Admitted *Pro Hac Vice*)

6 rwilliams@beusgilbert.com

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Donald Scott Macrae (State Bar No. 104663)

12 smacrae@steyer law.com

Jill K. Cohoe (State Bar No. 296844)

13 jcohoe@steyerlaw.com

14 *Attorneys for Nikola Corporation*

15 Dated: October 1, 2021

16 By: /s/
Adam M. Pivovar

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18 Michael G. Rhodes (SBN 116127)

rhodesmg@cooley.com

19 Heidi L. Keefe (SBN 178960)

hkeefe@cooley.com

20 Lam K. Nguyen (SBN 265285)

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21 3175 Hanover Street

22 Palo Alto, CA 94304-1130

Telephone: (650) 843-5000

23 Facsimile: (650) 849-7400

24 Adam M. Pivovar (SBN 246507)

apivovar@cooley.com

25 1229 Pennsylvania Ave., NW, Ste. 700

26 Washington, DC 20004-2446

Telephone: (202) 842-7800

27 Facsimile: (202) 842-7899

28 Dustin M. Knight (*pro hac vice*)

dknight@cooley.com

1 11951 Freedom Drive, 16th Floor
2 Reston, VA 20190
3 Telephone: (703) 456-8000
4 Facsimile: (703) 456-8100

Attorneys for Tesla, Inc.

ATTESTATION

Counsel for Tesla, Inc. hereby attests by his signature below that concurrence in the filing of this document was obtained from counsel for Tesla, Inc.

Dated: October 1, 2021

COOLEY LLP

By: /s/
Adam M. Pivovar
Attorneys for Tesla, Inc.

EXHIBIT I

Toni Sorma

From: Richard Williams <rwilliams@beusgilbert.com>
Sent: Wednesday, September 29, 2021 3:42 PM
To: David Neal
Subject: Nikola v Tesla
Attachments: Nikola v. Tesla -- Joint Statement on Proposed Case Schedule(895809.1).docx; Nikola v. Tesla -- Joint Statement on Proposed Case Schedule(895809.1).docx.nrl

David:

Do you agree with these changes?

Richard

L. Richard Williams

BEUS GILBERT McGRODER PLLC

701 North 44th Street | Phoenix, AZ 85008

Direct: 480.429.3003 | Main: 480.429.3000 | Fax: 480.429.3100

Email: rwilliams@beusgilbert.com

Assistant: Lisa Hoogervorst | 480.429.3108 | lhoogervorst@beusgilbert.com

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L. Richard Williams (*pro hac vice*)
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** additional attorneys listed in signature block*

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SAN FRANCISCO DIVISION

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 9 an appropriate timeframe for these discovery periods, accounting for concerns regarding the
 10 availability of Mr. Trevor R. Milton, Nikola's former founder, CEO, and a critical witness in this case.

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 14 Milton is in possession of knowledge and/or information that is material to the parties' claims and
 15 defenses, including Tesla's inequitable conduct counterclaims, and cannot be reasonably obtained by
 16 other means. (See Tesla's Counterclaims, ¶¶14-30, 65-68, Dkt. No. 128.)

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 18 *Milton*, Case No. 1:21-cr-00478-ER (S.D.N.Y.) (see Ex. A), and an SEC enforcement action, *United*
 19 *States Securities and Exchange Commission v. Trevor Milton*, Case No. Case No. 1:21-cv-06445
 20 (S.D.N.Y.) (see Ex. B), related to alleged misrepresentations Mr. Milton made during his tenure as
 21 Nikola's CEO. Counsel for Nikola believes these issues involved in these actions are not relevant to
 22 this case. Counsel for Tesla disagrees. ~~including statements made with respect to certain Nikola~~
 23 ~~semi-truck vehicles that are material to this case.~~ In any event, Counsel for Nikola is in the process of
 24 reaching ~~has reached~~ out to Mr. Milton's criminal defense counsel to determine if Mr. Milton will be
 25 is made available for a deposition while in light of these actions are pending and how his availability
 26 will affect the schedule in this case. ~~charges and how the present case should proceed in view of the~~
 27 ~~criminal charges against Mr. Milton.~~

1 The parties will continue working together to determine the most effective manner of
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4 status as an available witness is determined.

5 Dated: October 1, 2021~~September 29, 2021~~

6 Respectfully submitted,

7 By: /s/
L. Richard Williams

8 **BEUS GILBERT PLLC**

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smacrae@steyerlaw.com

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jcohoe@steyerlaw.com

18 *Attorneys for Nikola Corporation*

19 Dated: October 1, 2021~~September 29, 2021~~

20 By: /s/
Adam M. Pivovar

21 **COOLEY LLP**

22 Michael G. Rhodes (SBN 116127)

rhodesmg@cooley.com

23 Heidi L. Keefe (SBN 178960)

hkeefe@cooley.com

24 Lam K. Nguyen (SBN 265285)

lnguyen@cooley.com

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26 Palo Alto, CA 94304-1130

27 Telephone: (650) 843-5000

Facsimile: (650) 849-7400

28 Adam M. Pivovar (SBN 246507)

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2 1229 Pennsylvania Ave., NW, Ste. 700
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ATTESTATION

Counsel for Tesla, Inc. hereby attests by his signature below that concurrence in the filing of this document was obtained from counsel for Tesla, Inc.

Dated: ~~October 1, 2021~~September 29, 2021 **COOLEY LLP**

By: /s/
Adam M. Pivovar
Attorneys for Tesla, Inc.

EXHIBIT J

From: [Leo Beus](#)
To: ["bbondi@cahill.com"](mailto:bbondi@cahill.com)
Cc: [Richard Williams](#)
Subject: Trevor Milton/Nikola
Date: Wednesday, September 29, 2021 7:55:29 PM
Importance: High

Brad:

As I believe you know, Nikola has sued Tesla for infringement of Nikola's design patent and for other related claims. The case is pending in the Northern District of California. The judge is James Donato. We have been working with Tesla to propose a case management schedule to the judge. In that process, Tesla's attorneys raised the issue of whether Trevor would be able to sit for a deposition while his criminal proceedings were pending or whether he would invoke his fifth amendment rights.

We agreed that Trevor is a material witness and we proposed, on behalf of Nikola, that if Trevor were not available to be deposed, that the case be stayed until the criminal proceedings were resolved. We then reached out to Trevor to contact you so we could get your position on this issue. Then today, we received an order to show cause notice from the court asking for Nikola's to explain in writing why the case should not be dismissed for lack of prosecution. The judge was not happy that we had not gotten back to him with a proposed schedule. Our written response to the order to show cause is due next Wednesday, October 6, 2021.

We would like to report to the court your position on whether Trevor will be available for a deposition so that we can then ask the court to stay the case until his criminal issues are resolved. Because we are now under time pressure, would you please let us know your position on this issue by the end of this week at the latest, so that we can prepare our written submission to the Court.

Thank you for your help.

Best regards,
Leo

Leo R. Beus

BEUS GILBERT MCGRODER PLLC
701 North 44th Street | Phoenix, AZ 85008
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EXHIBIT K

From: [David Neal](#)
To: [Knight, Dustin M](#); [Pivovar, Adam](#)
Cc: [Richard Williams](#); [NikolaTeam](#); britton@nikolamotor.com
Subject: Draft Proposed Schedule for meeting to discuss Scheduling Order
Date: Tuesday, October 5, 2021 10:01:59 AM

Adam and Dustin,

Please find below a proposed schedule for discussion in our meeting today:

Event	Deadline
Patent L.R. 4-6: Claim Construction Tutorial	November 16, 2021
Patent L.R. 4-6: Claim Construction Hearing	December 2, 2021
Patent L.R. 3-7: Advice of Counsel	30 Days after service of Court's Claim Construction Ruling
Close of Fact Discovery	July 1, 2022
Expert Disclosure (Initial)	August 19, 2022
Expert Disclosure (Rebuttal)	September 9, 2022
Reply Expert Reports	September 23, 2022
Close of Expert Discovery	October 28, 2022
Last Day to File Daubert and Dispositive Motions	December 2, 2022
Final Pretrial Conference	March 29, 2023
Jury Trial	April 16, 2023

David Neal

Attorney, Admitted in Virginia and Washington, D.C.

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CERTIFICATE OF SERVICE

I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am employed in the County of San Francisco, State of California, and my business address is Steyer Lowenthal Boodrookas Alvarez & Smith LLP, 235 Pine Street, 15th Floor, San Francisco, California 94104.

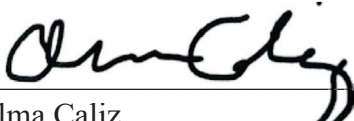
On the date set forth below, I served a true and correct copy of the following document(s):

**DECLARATION OF L. RICHARD WILLIAMS IN SUPPORT OF
PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE**

☒ By transmitting the above documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 6, 2021


Alma Caliz

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